

Trials in Delinquency Cases

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11.1 Purpose of Delinquency Adjudications

MCR 5.903(A)(19) defines "trial" as the factfinding adjudication of a case on the formal calendar on a charge contained in a petition authorized to be filed to determine if the minor comes within the jurisdiction of the court. *In re Alton*, 203 Mich App 405, 408 (1994).^{*} If the child is found not to be within the jurisdiction of the court (i.e., "not guilty" of the alleged offense), the court must dismiss the petition. MCL 712A.18(1); MSA 27.3178(598.18)(1).

^{*}See Form JC 59.

Although delinquency proceedings in the Family Division are not criminal and need not conform to all requirements of a criminal trial, the essential requirements of due process and fair treatment must be satisfied. *In re Belcher*, 143 Mich App 68, 71 (1985), citing *In re Gault*, 387 US 1, 30–31; 87 S Ct 1428; 18 L Ed 2d 527 (1967), *In re McDaniel*, 186 Mich App 696 (1991), and *In re Winship*, 397 US 358; 90 S Ct 1068; 25 L Ed 2d 368 (1970).

11.2 Right to Counsel

*See Form JC 07.

If the juvenile in a delinquency case is not represented by an attorney, the court must advise the juvenile of the right to the assistance of counsel at each stage of the proceedings, including an adjudicative hearing. MCL 712A.17c(1); MSA 27.3178(598.17c)(1), and MCR 5.915(A)(1). The appearance of defense counsel is governed by MCR 2.117(B). MCR 5.915(C).*

A. Appointment of Counsel

*See Form JC 03.

MCL 712A.17c(2)(a)–(e); MSA 27.3178(598.17c)(2)(a)–(e), and MCR 5.915(A)(2)(a)–(e) require the court to appoint an attorney* to represent the juvenile if any of the following applies:

- (a) the parent refuses or fails to appear and participate in the proceedings;
- (b) the parent is the complainant or victim;
- (c) the juvenile and those responsible for the support of the juvenile are found financially unable to retain an attorney and the juvenile does not waive the right to an attorney;
- (d) those responsible for the support of the juvenile refuse or neglect to retain an attorney and the juvenile does not waive the right to an attorney; or
- (e) the court determines that the best interests of the juvenile or the public require appointment.

NOTE 1: This provision for appointment of counsel for a juvenile differs from the provision applicable to indigent adult criminal defendants. Indigent adult criminal defendants may have counsel appointed if the offense charged is punishable by over 92 days in jail, or if the offense charged requires a minimum jail sentence, or if the court determines that it may send the defendant to jail. MCR 6.610(D)(2)(a)–(c).

An attorney appointed by the court must serve until discharged by the court. MCL 712A.17c(9); MSA 27.3178(598.17c)(9), and MCR 5.915(E).

NOTE 2: In some cases, the court will continue the attorney’s appointment past disposition — usually because the needs of the juvenile demand that an attorney familiar with the case follow the juvenile’s progress while he or she remains under the court’s jurisdiction.

B. Waiver of Right to Counsel

The juvenile may waive the right to the assistance of counsel except where a parent or guardian ad litem objects or where the court determines that the best interests of the juvenile or the public require appointment of counsel. The waiver must be made in open court to a judge or referee, who must find and place on the record that the waiver was voluntarily and understandingly made. MCL 712A.17c(3); MSA 27.3178(598.17c)(3), and MCR 5.915(A)(3).^{*} See, generally, *In re Gault*, 387 US 1, 42; 87 S Ct 1428; 18 L Ed 2d 527 (1967).

MCR 5.942(B)(3) adds that if the juvenile requests to proceed without the assistance of counsel, the court must advise the juvenile of the dangers and disadvantages of self-representation and make sure the juvenile is competent to conduct the defense and literate.

^{*}See Form JC 06.

C. Costs

If an attorney is appointed for a party in delinquency proceedings, the court may enter an order assessing attorney costs against the party or a person responsible for the support of that party. MCL 712A.17c(8); MSA 27.3178(598.17c)(8), and MCR 5.915(D). See also MCL 712A.18(5); MSA 27.3178(598.18)(5) (reimbursement as part of order of disposition).^{*}

An order assessing attorney costs may be enforced through contempt proceedings.^{*}

^{*}See Sections 12.14 – 12.18 for a detailed discussion of reimbursement of costs.

^{*}See Forms MC 230 and JC 38 and 39.

11.3 Right to a Jury Trial

The right to demand a jury in Family Division delinquency proceedings exists only at the trial. MCR 5.911(A). See *McKeiver v Pennsylvania*, 403 US 528, 545–51; 91 S Ct 1976; 2 L Ed 2d 647 (1971) (no federal constitutional right to jury trial). A party may demand a trial by jury by filing a written demand with the court. The demand must be filed within 14 days after the court gives notice of the right to a jury trial or 14 days after the appearance of counsel, whichever is later. The demand must be filed no later than seven days before trial, but the court may excuse a late filing in the interest of justice. MCR 5.911(B).^{*}

Any person interested in the hearing may demand a jury of six individuals, or the judge, on his or her own motion, may order a jury of six individuals to try the case. MCL 712A.17(2); MSA 27.3178(598.17)(2).^{*}

A judge, not a referee, must preside at a jury trial. MCR 5.912(A)(1)(a).

^{*}See Form JC 20.

^{*}See Section 18.8 (number of jurors in designated cases).

11.4 Right to a Trial Before a Judge

*See Section 11.5, below.

Parties have a right to a judge at a hearing on the formal calendar. MCR 5.912(A). MCR 5.903(A)(6) defines “formal calendar” as the judicial phases other than a delinquency proceeding on the consent calendar, a preliminary inquiry, or a preliminary hearing of a delinquency proceeding. The right to have a judge sit as factfinder is not absolute, however. A party who fails to make a timely demand for a judge to serve as factfinder may find that a referee will conduct all further proceedings, and that the right to demand a judge has been waived.*

*See Form JC 20.

A party may demand that a judge rather than a referee serve as factfinder at a nonjury trial by filing a written demand with the court. The demand must be filed within 14 days after the court has given the parties notice of their right to a judge, or 14 days after the appearance of counsel, whichever is later. The demand must be made no later than seven days before trial, but the court may excuse a late filing in the interest of justice. MCR 5.912(B).*

*See Section 7.5 (requirements for petitions).

Whenever practicable, two or more matters within the Family Division’s jurisdiction pending in the same judicial circuit and involving members of the same family must be assigned to the judge who was assigned the first matter. MCL 600.1023(1); MSA 27A.1023(1).*

The disqualification of a juvenile court judge is governed by MCR 2.003. MCR 5.912(C).

11.5 Referees Who May Conduct Nonjury Trials

*See Section 18.3 (judge must preside at nonjury trial in designated cases).

MCR 5.913(A)(1) states that, subject to the limitations in MCR 5.913(A)(2), the court may assign a referee to conduct a preliminary inquiry or to preside at a hearing other than a jury trial.*

MCR 5.913(A)(2) and MCL 712A.10; MSA 27.3178(598.10), specify the requisite qualifications of a referee. If the juvenile is charged with a criminal offense under MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1), only referees who are licensed attorneys may conduct delinquency proceedings other than preliminary inquiries or preliminary hearings. The sole exception is for probation officers or county agents who were designated to act as referees by a probate judge prior to January 1, 1988, and were acting as referees at that time.

*See Chapter 13 for a discussion of the review of referees’ recommended findings and conclusions.

Unless a party has demanded a trial by a jury or by a judge pursuant to MCR 5.911 or 5.912, a referee may conduct the trial and further proceedings through the dispositional phase. MCR 5.913(B). Thus, if a referee tries a case, that same referee may handle the disposition even if the juvenile requests that a judge handle the disposition.*

*See Chapter 15 for a discussion of post-dispositional reviews in delinquency cases.

NOTE: The referee who conducted the trial and made the disposition may also conduct the post-dispositional reviews in the case.*

11.6 Order of Proceedings

The 1988 Staff Comment to MCR 5.942 (Trials) discusses in general terms the procedures to be followed at trial.

“The order of proceedings, although not spelled out, is intended to be similar to that in criminal proceedings. The court would allow the parties to deliver an opening statement. The petitioner would make his or her opening statement first. The petitioner would offer evidence in support of the petition and then the juvenile would be allowed to offer evidence in defense. The petitioner may offer evidence in rebuttal of the juvenile’s evidence, and the juvenile may then offer evidence in rebuttal of the petitioner’s evidence. In the interest of justice, the court may allow the parties to offer further rebuttal or surrebuttal evidence. At the conclusion of the evidence, the petitioner, followed by the juvenile, has the right to deliver a closing argument. The petitioner would then have the right to deliver a rebuttal closing argument.”

See Martin, Dean & Webster, Michigan Court Rules Practice (3d ed), p 810.

11.7 Jury Procedures Generally

Jury procedures in the Family Division are governed by MCR 2.510 – 2.516 (civil cases), except that each party is entitled to 5 peremptory challenges and the verdict must be unanimous in delinquency proceedings. MCR 5.911(C)(1).^{*} The jury procedure rules for civil cases are as follows:

2.510 Juror Personal History Questionnaire

2.511 Impaneling the Jury^{*}

2.512 Rendering Verdict^{*}

2.513 View

2.514 Special Verdicts

2.515 Motion for Directed Verdict^{*}

2.516 Instructions to Jury^{*}

^{*}See Sections 11.8 (peremptory challenges) and 11.11 (taking verdict), below.

^{*}See Section 18.11 (challenges for cause).

^{*}See Section 11.11, below.

^{*}See Section 11.10, below.

^{*}See Section 11.9, below.

11.8 Peremptory Challenges in Jury Trials

MCR 5.911(C)(1)(a) provides that in a delinquency proceeding, each party is entitled to five peremptory challenges. Two or more parties on the same side are considered a single party for purposes of peremptory challenges. MCR 5.911(C)(3).

If the court denies a challenge for cause and counsel is forced to use a peremptory challenge to excuse the juror, and if counsel later finds a prospective juror objectionable but has exhausted all peremptory challenges, counsel must state on the record reasons for the objection. A motion for additional peremptory challenges may be used to raise such an objection. *Poet v Traverse City Osteopathic Hosp*, 433 Mich 228, 239–41 (1989).

11.9 Jury Instructions

A. Use of Standard Criminal Jury Instructions

MCR 2.516(D) governs the creation and use of Standard Jury Instructions. Because there are no standard jury instructions approved by the Michigan Supreme Court for use in delinquency proceedings, an alternative must be used.

NOTE: The Michigan Probate Judges Association has approved using the Standard Criminal Jury Instructions, with appropriate modifications. See Judge Donald S. Owens, Juvenile Jury Instructions, “Delinquency Jury Instructions,” January 1995.

B. Requests for Instructions

At a time the court reasonably directs, the parties must file written requests for instructions. In the absence of a direction from the court, a party may file a written request at or before the close of proofs. MCR 2.516(A)(1). The requests must be served on adverse parties in accordance with MCR 2.107, and the court must inform the attorneys of its proposed action on the requests before their arguments to the jury. MCR 2.516(A)(3)–(4).

Also, after the close of proofs, each party must submit to the court in writing a concise narrative statement of disputed issues in the case. The statement must set forth as issues only those disputed propositions of fact supported by the evidence. The parties may also submit their theories of the case as to each issue. MCR 2.516(A)(2). The court need not give these statements to the jury in the form presented if the court does present to the jury the material substance of the issues and theories of each party. MCR 2.516(A)(5) and 2.516(B)(3). If, in the court’s judgment, the language of the instruction, taken as a whole, is confusing,

inarticulate, inartfully organized, or simply difficult to understand, the court is not obligated to give the instruction. *People v Lester*, 406 Mich 252, 254 (1979), and *People v Roby*, 145 Mich App 138, 146 (1985).

C. Objections to Instructions

Under MCR 2.516(C), in order to assign as error the giving of or the failure to give an instruction, a party must object on the record before the jury retires to deliberate or to resume deliberations if the instruction was given after deliberations have begun. However, the party must be given an opportunity to make the objection outside the jury's presence.

D. Providing the Jury With a Copy of the Instructions

A full set of written or recorded instructions may be provided to the jury. A partial set of written or recorded instructions may be provided if the parties agree on the portions to be provided. MCR 2.516(B)(5).

11.10 Motions for Directed Verdict in Jury Trials

MCR 2.515 allows for a motion for directed verdict to be made at the close of the evidence offered by the opponent. Because the petitioner must show beyond a reasonable doubt that the juvenile comes within the jurisdiction of the court, the juvenile may move for a directed verdict at the close of the prosecuting attorney's or petitioner's proofs. The motion must be supported by specific grounds. If the motion is denied, the moving party may offer evidence without having reserved the right to do so. Denial of a motion for directed verdict does not constitute waiver of trial by jury.

In deciding on the motion, the court must examine, in a light most favorable to the petitioner, all evidence presented up to the time of the motion and all legitimate inferences that may be drawn from it. The petitioner must have introduced sufficient evidence of each element of the offense to justify a rational trier of fact in finding the juvenile "guilty" beyond a reasonable doubt. *People v Hampton*, 407 Mich 354, 368 (1979), and *In re Winship*, 397 US 358, 364; 90 S Ct 1068; 25 L Ed 2d 368 (1970).

11.11 Taking the Verdict in a Jury Trial

MCR 5.911(C)(1)(b) requires the verdict to be unanimous. A party may require the jury to be polled. If the number of jurors agreeing is less than required, the jury must be sent out for further deliberation. MCR 2.512(B)(2)–(3) and *People v Bufkin*, 168 Mich App 615, 617 (1988). The court may discharge a jury from the action:

- (1) because of an accident or calamity requiring it;
- (2) by consent of all parties;

(3) whenever an adjournment or mistrial is declared; or

(4) whenever the jurors have deliberated until it appears that they cannot agree.

MCR 2.512(C)(1)–(4). The court may order another jury to be drawn, and the same proceedings may be had before the new jury as might have been had before the jury discharged.

11.12 Persons Entitled to Be Present at Trial

*See Sections 8.4 (issuance and service of summons) and 8.6 (waiver of notice).

The court shall determine whether all parties (petitioner, juvenile, parent) are present. MCR 5.942(B)(1) and 5.903(A)(13). The juvenile has the right to be present at the trial along with parents, a guardian ad litem, and attorney. MCR 5.942(B)(1)(a). The court may proceed in the absence of a parent properly noticed to appear. MCR 5.942(B)(1)(b).*

*See Section 11.15(A), below.

The victim has the right to be present at trial as provided in the Juvenile Crime Victim’s Right Act. MCR 5.942(B)(1)(c).*

11.13 Preliminary Matters

*See Section 11.2, above, for a detailed discussion of the right to counsel at trial.

The court must read the allegations in the petition, unless waived. MCR 5.942(B)(2). Unless legal counsel appears with the juvenile, the court must inform the juvenile of the right to the assistance of an attorney pursuant to MCR 5.915. If the juvenile requests to proceed without the assistance of counsel, the court must advise the juvenile of the dangers and disadvantages of self-representation and make sure the juvenile is competent to conduct the defense and literate. MCR 5.942(B)(3).*

11.14 Closing of Trial to the Public During the Victim’s Testimony

*See Form JC 41.

MCR 5.925(A)(1) provides that, as a general rule, all juvenile court proceedings on the formal calendar and all preliminary hearings shall be open to the public. However, MCL 712A.17(7); MSA 27.3178(598.17)(7), and MCR 5.925(A)(2) allow the court to close proceedings to the general public under limited circumstances.* The court, on motion of a party or a victim, may close proceedings to the general public during the testimony of a child or a victim to protect the welfare of the child or victim. In making such a decision, the court must consider:

- F the age of the juvenile witness or the victim;
- F the psychological maturity of the juvenile witness or the victim;
- F the nature of the proceedings; and

- F the desire of the juvenile witness or his or her family or guardian or the desire of the victim to have the testimony taken in a room closed to the public.

The court may not close proceedings during the testimony of a juvenile if the juvenile is charged with a violation of law under MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1). MCL 712A.17(8); MSA 27.3178(598.17)(8), and MCR 5.925(A)(2).

11.15 Juvenile Crime Victim's Rights

The Juvenile Crime Victim's Rights Act* provides some special protections and rights to victims of juvenile offenses. See MCL 780.781 et seq.; MSA 28.1287(781) et seq.

*See Section 7.19 (applicability of JCVRA).

A. Right to Be Present Throughout Adjudication

The victim has the right to be present throughout the entire contested adjudication hearing, unless the victim is going to be called as a witness, in which case the court, for good cause shown, may order the victim to be sequestered until the victim first testifies. MCL 780.789; MSA 28.1287(789).*

*See also Section 11.19, below (victim's right to speedy trial).

B. Limitations on Identifying Testimony About Victims

If the victim has a reasonable apprehension of acts or threats of physical violence or intimidation by the juvenile or at the juvenile's direction against the victim or the victim's immediate family, the prosecuting attorney may move, or in the absence of a prosecuting attorney, the victim may request that the victim or any other witness not be compelled to testify at any court hearing for purposes of identifying the victim as to the victim's address, place of employment, or other personal identification without the victim's consent. A hearing on the motion must be in camera. MCL 780.788; MSA 28.1287(788).

C. Waiting Area for Victims

The court must provide a waiting area for the victim separate from the juvenile, the juvenile's relatives, and the juvenile's witnesses if such an area is available and the use of the area is practical. If a separate waiting area is not available or practical, the court must provide other safeguards to minimize the victim's contact with the juvenile, the juvenile's relatives, and the juvenile's witnesses during court proceedings. MCL 780.787; MSA 28.1287(787).

D. Right to Copy of Adjudicative Order

MCL 780.799; MSA 28.1287(799), states that, if requested, a victim shall be provided with a certified copy of the order of an adjudicative

*See Section 12.7 for a more detailed discussion of impact statements.

hearing for purposes of obtaining relief under MCL 600.2913; MSA 27A.2913, which allows recovery of damages in a civil action against the parents of an unemancipated minor who has willfully or maliciously destroyed real or personal property or caused bodily harm or injury to another. See *McKinney v Caball*, 40 Mich App 389 (1972), and *Citizens Ins Co v Lowery*, 159 Mich App 611, 618 (1987).

E. Notice of Right to Make Impact Statement*

The prosecuting attorney or the court, if requested by the victim, shall give to the victim notice of:

- (a) the offenses for which the juvenile was adjudicated;
- (b) the victim's right to make a written or oral impact statement at a disposition hearing; and
- (c) the time and place of the disposition proceeding.

MCL 780.791(1)(a)–(c); MSA 28.1287(791)(1)(a)–(c).

11.16 Appearance of Prosecuting Attorney

Only the prosecuting attorney may file a petition requesting the court to take jurisdiction of a juvenile allegedly within MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1). MCL 712A.11(2); MSA 27.3178(598.11)(2), and MCR 5.914(B)(1). If the proceeding requires a hearing and the taking of testimony, MCR 5.914(A) and 5.914(B)(2), and MCL 712A.17(4); MSA 27.3178(598.17)(4), require that the prosecuting attorney shall appear for the people. The prosecuting attorney may be a county prosecuting attorney, an assistant prosecuting attorney for a county, the attorney general, the deputy attorney general, an assistant attorney general, or, if an ordinance violation is alleged, an attorney for the political subdivision or governmental entity that enacted the ordinance, charter, rule, or regulation upon which the ordinance violation is based. MCR 5.903(B)(5).

For petitions that are submitted other than under MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1), the prosecutor shall, upon request of the court, review the petition for legal sufficiency, MCR 5.914(A), and appear for the people, MCL 712A.17(4); MSA 27.3178(598.17)(4).

11.17 Speedy Trial Requirements Generally

In all cases the trial must be held within six months after the filing of the petition, unless adjourned for good cause. If the juvenile is detained, the trial has not started within 63 days after the juvenile is taken into custody, and the delay in starting the trial is not attributable to the defense, the court shall order forthwith that the juvenile be released pending trial without requiring

that bail be posted unless the juvenile is being detained on another matter. MCR 5.942(A).

NOTE: There is no sanction stated in MCR 5.942(A) for violation of the 6-month rule.

11.18 Speedy Trial Requirements When a Motion for “Traditional” Waiver Has Been Denied

In cases where the prosecutor has sought waiver of the court’s jurisdiction and the motion has been denied, if the juvenile is detained and the trial of the matter in juvenile court has not started within 28 days after entry of the order denying the waiver motion and the delay is not attributable to the defense, the court shall forthwith order the juvenile released pending trial without requiring that bail be posted unless the juvenile is being detained on another matter. MCR 5.950(D).*

*See Section 24.21–24.22 for a discussion of required procedures when a motion for “traditional” waiver is denied.

11.19 Victim’s Right to Speedy Trial

MCL 780.786a(1)(a)–(d); MSA 28.1287(786a)(1)(a)–(d), of the Juvenile Crime Victim’s Rights Act state that a speedy trial may be scheduled for any case in which the victim is declared by the prosecuting attorney to be:

- (a) a victim of child abuse, including sexual abuse or any other assaultive crime;
- (b) a victim of criminal sexual conduct in the first, second, or third degree or of an assault with intent to commit criminal sexual conduct involving penetration or to commit criminal sexual conduct in the second degree;
- (c) sixty-five years of age or older; or
- (d) an individual with a disability that inhibits the individual’s ability to attend court or participate in the proceedings.

Upon motion of the prosecuting attorney for a speedy trial in a case involving any of the victims described above, the court must set a hearing date within 14 days after the motion is filed, with notice made pursuant to the Michigan Court Rules.* If the motion is granted, the trial shall not be scheduled earlier than 21 days from the date of the hearing. MCL 780.786a(2); MSA 28.1287(786a)(2).

*See Section 8.5.

11.20 Rules of Evidence and Standard of Proof

MCR 5.942(C) states that the Michigan Rules of Evidence and the standard of proof of beyond a reasonable doubt apply at trials. See also *In re Winship*, 397 US 358, 366–68; 90 S Ct 1068; 25 L Ed 2d 368 (1970), *In re Gault*, 387

US 1, 30–31; 87 S Ct 1428; 18 L Ed 2d 527 (1967), and *In re Davis*, 166 Mich App 735 (1988).

11.21 Court's Right to Call Additional Witnesses

If at any time the court believes that the evidence has not been fully developed, it may:

- (1) examine a witness;
- (2) call a witness; or
- (3) adjourn the matter before the court, and
 - (a) cause service of process on additional witnesses, or
 - (b) order production of other evidence.

MCR 5.923(A)(1)–(3). See *In re Alton*, 203 Mich App 405, 407–08 (1994) (court allowed additional testimony that directly addressed key conflicts between the testimony of the complainant and juvenile).

11.22 Appointment of Impartial Questioner

The court may appoint an impartial psychologist or psychiatrist to ask questions of a child witness at a hearing. MCR 5.923(F).

11.23 Alternative Procedures to Obtain Testimony of Alleged Victim

MCR 5.923(E) provides that the court may allow the use of closed-circuit television, speaker telephone, or other similar electronic equipment to facilitate hearings or to protect the parties. The court may allow the use of videotaped statements and depositions, anatomical dolls, support persons, and take other measures to protect the child witness as authorized by, and enumerated in, MCL 712A.17b; MSA 27.3178(598.17b).*

11.24 Findings of Fact and Conclusions of Law by Judge or Referee*

Subchapter 5.900 of the Michigan Court Rules does not have a specific court rule dealing with findings of fact and conclusions of law by a judge or referee in a nonjury trial.

MCL 712A.10(1)(c); MSA 27.3178(598.10)(1)(c), states that a referee must “make a written signed report to the judge . . . containing a summary of the testimony taken and a recommendation for the court’s findings”*

*See Section 9.12 for a detailed discussion of these rules.

*See Chapter 13 (review of referee’s recommended findings and conclusions) and Section 11.27, below (rehearings).

*See Forms JC 13 and JC 59.

11.25 Record of Proceedings at Adjudicative Hearings

MCR 5.925(B) provides that a record of proceedings on the formal calendar must be made and preserved by stenographic recording or by mechanical or electronic recording as provided by statute or MCR 8.108.

11.26 Additional Orders and Notices

A. Notice to Courts With Prior Continuing Jurisdiction*

Under MCL 712A.3a; MSA 27.3178(598.3a), where the child is subject to a prior or continuing order of any other court of this state, notice must be sent to such other court of any order subsequently entered under the juvenile code. See also MCR 5.927.*

*See Section 2.16 for a more detailed discussion of this requirement.

*See Form MC 28.

B. Fingerprinting of Juveniles Adjudicated of “Reportable Juvenile Offenses”*

Before the court enters an order of disposition on a reportable juvenile offense, the court must examine the confidential files to verify that the juvenile has been fingerprinted. If the juvenile has not been fingerprinted, the judge or referee must:

*See Section 4.10(A) for a list of “reportable juvenile offenses.”

(1) direct the juvenile to go to the law enforcement agency involved in the apprehension of the juvenile, or to the sheriff’s department, so fingerprints may be taken, or

(2) issue an order to the sheriff’s department to apprehend the juvenile and take the juvenile’s fingerprints.

MCR 5.936(B)(1)–(2).*

*See Forms JC 59 and MC 233.

C. Mandatory Testing for Venereal Diseases and AIDS*

If a juvenile is convicted of or found responsible for a violation of any of several enumerated offenses, the court must order the juvenile to be examined or tested for venereal disease and hepatitis B infection and for the presence of HIV or an antibody to HIV. MCL 333.5129(4); MSA 14.15(5129)(4). The court must also order the juvenile to receive counseling regarding these diseases. MCL 333.5129(2); MSA 14.15(5129)(2).*

*See Section 4.13(B) for a list of covered offenses.

*See Form MC 234.

D. DNA Profiling*

A juvenile found responsible for one or more of several enumerated offenses must provide samples for chemical testing for DNA identification profiling or a determination of the sample’s genetic markers and must provide samples for chemical testing for a determination of his or her secretor status. MCL 712A.18k(1); MSA 27.3178(598.18k)(1), and MCL 750.520m(1); MSA 28.788(13)(1).*

*See Section 4.12(A) for a list of covered offenses.

*See Form MC 234.

11.27 Motions for Rehearing

*See Form JC 15.

A party may seek a rehearing or new trial by filing a written motion* stating the basis for the relief sought. A motion will not be considered unless it presents a matter not previously presented to the court, or presented but not previously considered by the court, which, if true, would cause the court to reconsider the case. MCR 5.992(A). MCL 712A.21; MSA 27.3178(598.21), allows a petition to be filed by “an interested person,” which includes a member of a local foster care review board. MCL 712A.21(3); MSA 27.3178(598.21)(3).

A. Standards for Granting Relief

MCR 5.992(A) does not state the standard for granting relief following a court’s consideration of a party’s motion for rehearing. *In re Alton*, 203 Mich App 405, 409 (1994). However, MCR 2.613(A), the “harmless error rule” for civil proceedings, applies to juvenile delinquency proceedings. *Id.*, and MCR 5.902(A). The “harmless error rule” states that an error in the admission or the exclusion of evidence, an error in a ruling or order, or an error or defect in anything done or omitted by the court or the parties is not ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice.

In *In re Alton*, *supra*, at 409–10, the Court of Appeals remanded the case to the juvenile court for a rehearing on the juvenile’s motion for a new trial. In doing so, the Court adopted the following guidelines for ruling on such motions:

“In ruling on the motion, the parties and the trial court applied the rules for granting a new trial embodied in MCR 2.611(A)(1). That court rule is not applicable in juvenile delinquency proceedings. See MCR 5.901(B). Therefore, we remand this case for the trial court to reconsider the juvenile’s motion under the proper standard of review: whether, in light of the new evidence presented, it appears to the trial court that a failure to grant the juvenile a new trial would be inconsistent with substantial justice. MCR 2.613(A). In this case, that means the trial court must decide whether it appears that if the court refuses to grant the motion, it will be exercising jurisdiction over a juvenile who is not properly within its jurisdiction. The trial court must state the reasons for its decision on the record or in writing. MCR 5.992(E).” (Footnote omitted.)

B. Notice Requirements

MCR 5.992(B) states that all parties must be given notice of the motion in accordance with MCR 5.920.*

*See Chapter 8.

C. Time Requirements for Filing Motions for Rehearing

The written motion stating the basis for the relief sought must be filed within 21 days after decision of disposition or supplemental disposition. The court may entertain an untimely motion for good cause shown. MCR 5.992(A).

D. Time Requirements for Filing Response

Any response by parties to a motion for rehearing must be in writing and filed with the court and served on opposing parties within seven days of the motion. MCR 5.992(C).

E. Remedies

MCR 5.992(D) states that the judge may affirm, modify, or vacate the decision previously made in whole or in part, on the basis of the record, the memoranda prepared, or a hearing on the motion, whichever the court in its discretion finds appropriate for the case. The court may enter an order for supplemental disposition while the juvenile remains under the court's jurisdiction. MCL 712A.21(1); MSA 27.3178(598.21)(1).

F. No Hearing Required

MCR 5.992(E) states that the court need not hold a hearing for a ruling on a motion for rehearing. Any hearing conducted shall be in accordance with the rules for dispositional hearings and, at the discretion of the court, may be assigned to the person who conducted the original hearing.*

*See Section 12.6 for a discussion of the applicable evidentiary rules.

G. Findings by Court

The court shall state the reasons for its decision on the record or in writing. MCR 5.992(E).

H. Stay of Proceedings and Grant of Bail

MCR 5.992(F) states that the court may stay any order, or grant bail to a detained juvenile, pending a ruling on a motion for rehearing.

